

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 738
94TH GENERAL ASSEMBLY

Reported from the Special Committee on Energy and Environment May 8, 2008 with recommendation that House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 738 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

D. ADAM CRUMBLISS, Chief Clerk

3345L.05C

AN ACT

To repeal sections 643.151 and 644.076, RSMo, and to enact in lieu thereof four new sections relating to recycling and energy conservation, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 643.151 and 644.076, RSMo, are repealed and four new sections
2 enacted in lieu thereof, to be known as sections 66.450, 442.620, 643.151 and 644.076, to read
3 as follows:

66.450. No county with a charter form of government and with more than one
2 **million inhabitants shall enact any charter provision governing the establishment of areas**
3 **within the unincorporated areas of such county for the collection and transfer of waste,**
4 **trash, and other materials, including recovered materials or authorizing bids or proposals**
5 **for the provision of such services. Any such charter provision shall be void.**

442.620. 1. Notwithstanding any other provision of law or county or municipal
2 **ordinance to the contrary, for residential home sales that occur on or after August 28,**
3 **2008, the seller of a newly constructed residential home shall disclose to the initial**
4 **purchaser of the home its energy efficiency rating according to the energy star rating**
5 **system. The disclosure shall occur at least one week before the final completion of the**
6 **home sale through a completely integrated agreement.**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

7 **2. Failure to disclose the energy efficiency information required under subsection**
8 **1 of this section shall result in the forfeiture of five hundred dollars by the seller to the**
9 **purchaser of the newly constructed home. Any purchaser of a new residential home who**
10 **fails to receive notice of such home's energy efficiency rating may withhold five hundred**
11 **dollars from the purchase price of the home, or in case full payment has been made on the**
12 **home, the purchaser may pursue a cause of action in any court of competent jurisdiction**
13 **for five hundred dollars.**

14 **3. If a purchaser is successful in his or her suit under the provisions of this section,**
15 **he or she shall be awarded attorney fees and costs.**

643.151. 1. It is unlawful for any person to cause or permit any air pollution by
2 emission of any air contaminant from any air contaminant source located in Missouri, in
3 violation of sections 643.010 to 643.190, or any rule promulgated by the commission.

4 2. No person who knows or should know of the existence of such rules may cause or
5 permit any air pollution by emission of any air contaminant source located outside Missouri, and
6 which emissions enter Missouri in excess of the emission control regulations applicable to the
7 portion of Missouri where the air contaminant enters the state.

8 3. In the event the commission determines that any provision of sections 643.010 to
9 643.190, or the rules promulgated hereunder, permits issued, or any final order or determination
10 made by the commission or the director is being violated, the commission may cause to have
11 instituted a civil action in any court of competent jurisdiction for injunctive relief to prevent any
12 further violation or for the assessment of a penalty not to exceed ten thousand dollars for each
13 violation per day for each day, or part thereof, the violation continues to occur, or both, as the
14 court may deem proper. A civil monetary penalty under this section shall not be assessed for
15 a violation where an administrative penalty was assessed under section 643.085. The
16 commission may request the attorney general or other counsel to bring such action in the name
17 of the people of the state of Missouri. Process may be served in any manner provided by chapter
18 506, RSMo, including but not limited to sections 506.510 and 506.520, RSMo. Suit may be
19 brought in any county where the defendant's principal place of business is located or where the
20 air contaminant source is located or where the air contaminants enter the state of Missouri. Any
21 offer of settlement to resolve a civil penalty under this section shall be in writing, shall state that
22 an action for imposition of a civil penalty may be initiated by the attorney general or a
23 prosecuting attorney representing the department under authority of this section, and shall
24 identify any dollar amount as an offer of settlement which shall be negotiated in good faith
25 through conference, conciliation and persuasion.

26 4. **Any company, with the exception of confined animal feed operations of any**
27 **classification as defined in 640.703, RSMo, that the commission or the director determines**
28 **to be in persistent violation of the provisions of this section or any odor rule promulgated**

29 by the department shall forfeit any permits issued by the department under this chapter
30 or chapter 644, RSMo, until such time that the company, with the exception of confined
31 animal feed operations of any classification as defined in 640.703, RSMo, successfully
32 obtains a new permit. For the purposes of this subsection, the term "persistent violation"
33 shall mean any company, with the exception of confined animal feed operations of any
34 classification as defined in 640.703, RSMo, that has been found by the commission or the
35 director to have violated the provisions of this section at least six times during any twelve-
36 month period or at least twelve times during any thirty-six-month period.

37 **5. During any thirty-six-month period, any company, with the exception of confined**
38 **animal feed operations of any classification as defined in 640.703, RSMo, that the**
39 **commission or director has found to have violated the provisions of this section on more**
40 **than one occasion shall be subject to a penalty of not less than ten thousand dollars and not**
41 **more than thirty thousand dollars for each violation per day for each day, or part thereof,**
42 **the violation continues to occur, or both, as the court may deem proper.**

43 **6.** Any member of the commission or employee thereof who is convicted of willful
44 disclosure or conspiracy to disclose confidential information to any person other than one
45 entitled to the information under sections 643.010 to 643.190 is guilty of a class A misdemeanor
46 and upon conviction thereof shall be punished by a fine of not more than one thousand dollars.

47 [5.] **7.** No liability shall be imposed upon persons violating the provisions of sections
48 643.010 to 643.190 or any rule hereunder due to any violation caused by an act of God, war,
49 strike, riot or other catastrophe.

644.076. 1. It is unlawful for any person to cause or permit any discharge of water
2 contaminants from any water contaminant or point source located in Missouri in violation of
3 sections 644.006 to 644.141, or any standard, rule or regulation promulgated by the commission.
4 In the event the commission or the director determines that any provision of sections 644.006
5 to 644.141 or standard, rules, limitations or regulations promulgated pursuant thereto, or permits
6 issued by, or any final abatement order, other order, or determination made by the commission
7 or the director, or any filing requirement pursuant to sections 644.006 to 644.141 or any other
8 provision which this state is required to enforce pursuant to any federal water pollution control
9 act, is being, was, or is in imminent danger of being violated, the commission or director may
10 cause to have instituted a civil action in any court of competent jurisdiction for the injunctive
11 relief to prevent any such violation or further violation or for the assessment of a penalty not to
12 exceed ten thousand dollars per day for each day, or part thereof, the violation occurred and
13 continues to occur, or both, as the court deems proper. A civil monetary penalty pursuant to this
14 section shall not be assessed for a violation where an administrative penalty was assessed
15 pursuant to section 644.079. The commission, the chair of a watershed district's board of
16 trustees created under section 249.1150, RSMo, or the director may request either the attorney

17 general or a prosecuting attorney to bring any action authorized in this section in the name of
18 the people of the state of Missouri. Suit may be brought in any county where the defendant's
19 principal place of business is located or where the water contaminant or point source is located
20 or was located at the time the violation occurred. Any offer of settlement to resolve a civil
21 penalty pursuant to this section shall be in writing, shall state that an action for imposition of a
22 civil penalty may be initiated by the attorney general or a prosecuting attorney representing the
23 department pursuant to this section, and shall identify any dollar amount as an offer of settlement
24 which shall be negotiated in good faith through conference, conciliation and persuasion.

25 **2. Any company, with the exception of confined animal feed operations of any**
26 **classification as defined in 640.703, RSMo, that the commission or the director determines**
27 **to be in persistent violation of the provisions of this section shall forfeit any permits issued**
28 **by the department under this chapter or chapter 643, RSMo, until such time that the**
29 **company, with the exception of confined animal feed operations of any classification as**
30 **defined in 640.703, RSMo, successfully obtains a new permit. For the purposes of this**
31 **subsection, the term "persistent violation" shall mean any company, with the exception of**
32 **confined animal feed operations of any classification as defined in 640.703, RSMo, that the**
33 **commission or the director has found to have violated the provisions of this section at least**
34 **six times during any twelve-month period or at least twelve times during any thirty-six-**
35 **month period.**

36 **3. During any thirty-six-month period, any company, with the exception of confined**
37 **animal feed operations of any classification as defined in 640.703, RSMo, that the**
38 **commission or director has found to have violated the provisions of this section on more**
39 **than one occasion shall be subject to a penalty of not less than ten thousand dollars and not**
40 **more than thirty thousand dollars for each violation per day for each day, or part thereof,**
41 **the violation continues to occur, or both, as the court may deem proper.**

42 **4. Any person who knowingly makes any false statement, representation or certification**
43 **in any application, record, report, plan, or other document filed or required to be maintained**
44 **pursuant to sections 644.006 to 644.141 or who falsifies, tampers with, or knowingly renders**
45 **inaccurate any monitoring device or method required to be maintained pursuant to sections**
46 **644.006 to 644.141 shall, upon conviction, be punished by a fine of not more than ten thousand**
47 **dollars, or by imprisonment for not more than six months, or by both.**

48 **[3.] 5. Any person who willfully or negligently commits any violation set forth pursuant**
49 **to subsection 1 of this section shall, upon conviction, be punished by a fine of not less than two**
50 **thousand five hundred dollars nor more than twenty-five thousand dollars per day of violation,**
51 **or by imprisonment for not more than one year, or both. Second and successive convictions for**
52 **violation of the same provision of this section by any person shall be punished by a fine of not**

53 more than fifty thousand dollars per day of violation, or by imprisonment for not more than two
54 years, or both.

55 [4.] 6. The liabilities which shall be imposed pursuant to any provision of sections
56 644.006 to 644.141 upon persons violating the provisions of sections 644.006 to 644.141 or any
57 standard, rule, limitation, or regulation adopted pursuant thereto shall not be imposed due to any
58 violation caused by an act of God, war, strike, riot, or other catastrophe.

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